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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,075	12/07/2001	Shigemi Mashino	1131-0461P	8580

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EXAMINER

WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 02/24/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/005,075

Applicant(s)

MASHINO ET AL.

Examiner

Dionne A. Walls

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities:

- On page 8, line 1, delete "2" and replace with –1--.

Appropriate correction is requested.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "constant-rate supply type" (emphasis added) renders the claims indefinite because the claims include an element not actually disclosed (those encompassed by "type"), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Okumoto (US. Pat. No. 4,635,648).

Okumoto discloses a shredded tobacco supply apparatus of a cigarette manufacturing machine comprising a shredded tobacco feeding apparatus (corresponding to the claimed "tobacco feeder"), said tobacco feeding apparatus including a storage reservoir 14 (corresponding to the claimed "reservoir stored with shredded tobacco"), an endless pin belt 17 or 24 (corresponding to the claimed "ascending conveyor capable of receiving the shredded tobacco from said reservoir and transferring the shredded tobacco upward"), an area where tobacco shreds 25 drift (corresponds to the claimed "deposition chute capable of receiving the shredded tobacco from said ascending conveyor and depositing the received shredded tobacco"), pin drum 27 (corresponding to the claimed "feed roller unit...for delivering the shredded tobacco from said deposition chute"), winnower 29 (corresponding to the claimed "acceleration means for accelerating the shredded tobacco delivered from said feed roller unit"), and duct 30 (corresponding to the claimed "pneumatic transportation means") which includes a chimney 2 for guiding the shredded tobacco and the air current toward a porous band (corresponding to the claimed "tobacco band") (col. 3, line 8 – col. 4, line 62). As apparent from figure 1, the chimney 2 inclines at an angle to the traveling direction of the porous conveyor/suction chamber 3.

Regarding claim 2, Okumoto discloses horizontal conveyor 16 disposed in such a manner as to constitute a bottom of the storage reservoir 14 (corresponding to the claimed "bottom conveyor forming a bottom wall of said reservoir").

Regarding claim 4, Okumoto discloses an air stream which is sent in under pressure through duct 30 and is changed into a uniform air stream by current plate 31

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and jetted out of a hole 32 to ascend through a chimney 2 (corresponding to the claimed "jet diffuser for jetting out an air current toward the chimney"). While Okumoto may not explicitly state that the jet diffuser is capable of jetting out the air current at an angle of inclination equal to the angle of inclination of the chimney, where the claimed and prior art apparatus is identical or substantially identical in structure or composition, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430,433 (CCPA 1977). In other words, when the structure recited in the reference is substantially identical to that of the claims, the claimed functions (i.e. capabilities) are presumed to be inherent. MPEP 2112.

Regarding claim 5, as depicted in fig.1 the winnower 29 (corresponding to the claimed "acceleration means"), is a roller which is located between the pin drum 27 (corresponding to the claimed "feed roller unit") and the current plate 30/hole 32 (corresponding to the claimed "jet diffuser").

Regarding claim 6, Okumoto discloses a duct 30 (corresponding to the claimed "pneumatic transportation") which circulates the air stream (corresponding to the claimed "air current").

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okumoto (US. Pat. No. 4,635,648) in view of JP 61-224977.

This claim differs from the Okumoto reference because of language that recites the apparatus comprises a plurality of tobacco feeders, the respective chimneys being arranged adjacent to one another in the traveling direction of the tobacco band.

However, JP 61-224977 discloses a shredded tobacco supply apparatus having such arrangement (see figs. 2,3). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to arrange several feeders adjacent one another, as depicted in JP 61-224977, in order to provide for more than one type of tobacco filler material for the finished tobacco product.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (703) 305-0933. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

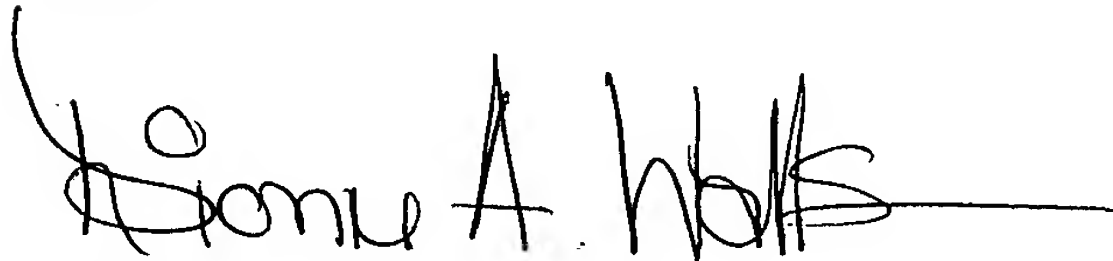
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

A handwritten signature in black ink, appearing to read "Dionne A. Walls", with a horizontal line extending to the right.

Dionne A. Walls  
February 20, 2003